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ABSTRACT

The nature of unit determination is complex and needs thorough institutional preparation prior to appearing before a labor board hearing. This listing and discussion of positions, which present the greatest difficulty relative to inclusion and/or exclusion from a general faculty bargaining unit, is compiled by persons with broad experience in presentation of unit determination cases before the National Labor Relations Board. Some areas for the college or university employer to explore in framing its unit position are: department chairmen; part-time faculty; graduate and professional schools; other professionals; organization and strategy; and informing the faculty. (Author/KE)

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SPECIAL REPORT #26

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PREPARATION OF FACULTY REPRESENTATION CASES-- A CHECKLIST OF ISSUES FOR PRIVATE COLLEGES AND UNIVERSITIES

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Administrators at unorganized colleges and universities, both public and private, will find this report illustrative of the complex nature of unit determination and the need for thorough institutional preparation prior to appearing before a labor board hearing.

The authors of the Special Report, both of whom have broad experience in presentation of unit determination cases before the National Labor Relations Board, provide an extensive listing, with appropriate discussion, of those positions which present the greatest difficulty relative to inclusion and/or exclusion from a general faculty bargaining unit.

Although this paper was prepared specifically for private institutions under the jurisdiction of the NLRB, the procedures and issues are generally applicable to public institutions in the twenty-four states which have public employee bargaining laws covering higher education as of this date.

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The statements and views expressed herein are solely those of the authors who developed this material through the handling of a number of faculty representation cases including those involving the Universities of Vermont and Massachusetts and Goddard College.

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INTRODUCTION

The preparation of representation cases before the state or National Labor Relations Board is often a frantic undertaking for an employer, frequently done over too short a time period with too little guidance. Once the Board's processes are set in motion by a union filing a petition for representation the time frame in which to adequately prepare is necessarily circumscribed by the Board's obligations under the law to expedite the procedures.

The purpose of this article is to provide the college or university employer some guidance as to what questions to pursue and what areas to explore in framing its unit position in preparation for such proceedings.

I. BACKGROUND

It has been six years since the NLRB first asserted jurisdiction over private colleges and universities. While the three major educational unions and numerous independents have scrambled for faculty representation rights, their organizational efforts have led to some of the most perplexing unit problems which the Board has had to face in its forty years of operation.

In trying to establish appropriate faculty bargaining units, the Board has had to struggle with the status of department chairmen, assessed and then reassessed the community of interest between full and part-time teachers, discussed faculty governance, considered "popcorn" units and made the concept of collegiality a major factor in its deliberations.

Through a maze of new terms and amorphous organizational structures, the Board has now begun to develop an identifiable body of case law on the major unit issues.

The college employer, faced with a faculty representation petition, must deal with many pressing decisions. However, its most immediate problem will be to determine what position to take before the Board relative to the bargaining unit. Whom should the college seek to exclude as its supervisory and managerial personnel? What position shall it take on its part-time faculty? Are there non-teaching professionals who should or should not be in the unit? These and other questions have to be considered and answered in a relatively short period of time once a petition is filed.

Several factors will enter into deliberation of these questions. The college employer should carefully consider what unit will provide maximum ease in administration in the event the union should win the election. If the institution's department chairmen truly function as first-line "supervisors", it may be intolerable to have them included in a unit of faculty members. If a union seeks to exclude from its petitioned unit one or more professional schools of the university, the administration must decide whether such fragmentation is acceptable.

Politics, of course, enter into all unit proposals. The petitioning union will invariably frame its proposed unit upon pragmatic considerations, not the least of which is the need for favorable votes in the forthcoming election. It may, for example, have very few votes among the law faculty and thus specifically exclude them from its petitioned unit. The college administration may take this into consideration in deciding upon its response before the Board on this issue.

On some issues, either or both of the parties may decide not to take any firm position. In such cases, the Board, on the basis of evidence presented, will decide the unit issue on its own.

No matter what the college employer's unit position will be, extensive evidentiary preparation will be required to successfully support that position during the formal hearings before the Board.

II. DEPARTMENT CHAIRMEN

For institutions wishing to exclude department chairmen or similar personnel, the preparation should be given top priority and by its very nature will be extremely detailed, for the Board has taken into account a considerable array of factors in framing its decisions on whether such personnel are supervisors within the meaning of Section 2(11) of the Act.

In preparing its case on department chairmen, whether the college seeks to include or exclude them from the unit, there will be two broad areas to examine: a) the status of the chairmen b) the function of the chairmen.

Status. The first area of the chairman's "status" is a study in perspective. The different ways in which the administration and the faculty view the department chairmen has arisen as a significant factor in several Board cases. Thus, for example, in arguing for the exclusion of chairmen as supervisors or managerial personnel, institutions have tried to prove that a chairman is accorded very special status at the college which reflects his basic position as "front-line management". The central thrust of such arguments lies in the proposition that, while reflecting elements of both, the department chairman's interests are more closely aligned with the administration than with the faculty.

This is often difficult to prove, even at institutions with "strong chairmen". However, the question "who is the chairman?" will pervade the entire unit hearing, and thus the development of this line is important.

Every institution will differ on the facts it can present on the chairman's status. However, certain "potential evidence" can and should be examined carefully. Such evidence should include but not be limited to:

a) Evidence that the chairmen receive a special increment in salary

for being chairmen, and/or that on the average they are the highest paid faculty.

b) Evidence of reduced work loads because of chairmanship duties. This may include examining course reductions, a reduction in the number of students he must advise and so on.

c) Increased or different fringe benefits which chairmen have that faculty do not.

d) Special offices and equipment.

e) Private secretaries or priority on the use of departmental secretaries.

f) Other support staff to assist him in his duties, including non-professional and student help.

g) Evidence of progression into higher administrative positions from the chairman slot.

h) Participation in regular deans' councils or other "management" meetings in which faculty do not participate.

i) Different length of contract or separate administrative contract.

j) Evidence that chairmen are the highest ranked faculty in their departments and that they are tenured.

k) Different process for evaluating the chairmen as distinct from the faculty evaluation process.

l) Selection process--are they appointed by the administration or elected by the faculty? The greater the extent of faculty participation in the selection process the less chance there is to show that chairmen are really management appointees rather than faculty agents.

m) Evidence that chairmen promulgate policy and report back to their faculty on behalf of the administration.

The Department Chairman's Function. This may include a variety of duties, such as assigning courses, recommending new faculty for hire, and making major evaluations and recommendations on faculty personnel actions. In trying to establish the chairman as a supervisor, there is a two-fold problem involved: 1) meeting the statutory requirement that the chairman's recommendations are "effective" and 2) overcoming the special academic problem of "collegiality", which simply means that whatever supervisory functions the chairman may possess are possibly diluted because he exercises such functions in consultation or in conjunction with the department faculty.

The first, and maybe the most significant, line to develop at the hearing is the role of the chairman in faculty hiring. The two general questions here are:

a) To what extent do chairmen have a role in determining the need for new faculty?

b) Once it is determined that new faculty will be hired, what role does the chairman play in the hiring process?

With respect to the first area, questions should center on whether the chairman analyzes the needs of the department to determine the needs for new faculty and then how significant is his opinion. Very often, chairmen have great autonomy in determining whether to hire part time faculty or not. Close attention should be given to this point.

Once it is determined that new faculty will be hired, what role does the chairman play in the hiring process.

1) Does he draft a job description?

2) Does he participate in advertising?

3) How much does he independently recruit at conventions or from other colleges?

4) Do applicants contact the chairman directly?

5) Does he screen and veto candidates without higher approval?

6) Does he select applicants for interviews?

7) To what extent does he have authority to set up committees to assist him in these functions? To what extent must he set up such committees?

8) Does he recommend and if so, how effective are such recommendations?

9) If faculty and/or committees also make recommendations, does the chairman's recommendation carry more weight?

10) Does he contact the new hire?

11) Does he arrange or recommend initial salary?

12) How much more autonomy and power does he have over part-time hiring?

Most department chairmen have a role in faculty evaluations, and the chairman's authority to recommend personnel changes on the basis of such evaluations can be a central factor in weighing supervisory status.

Methods of evaluations should be explored:

1) Does the chairman engage in direct classroom observation?

2) Does he review formal student evaluations of faculty?

3) Do students come to see the chairman with complaints or praise for their professors?

4) Does the chairman review research and publications of his faculty?

5) Does the chairman take into consideration the faculty member's participation in departmental affairs?

6) Does the chairman check with graduate assistants, teaching assistants and fellows for their opinions about faculty they work with?

For what purposes do chairmen evaluate?

a) reappointment and nonreappointment?

b) promotions in rank?

c) granting tenure?

d) dismissal?

e) salary increases?

f) improvement of instruction?

In such matters, who else or what committees evaluate a faculty member's performance? Which recommendations carry more weight with the dean? Whose recommendation does the dean usually accept when recommendations are in conflict?

Under the Act, an individual is a supervisor if he can discipline or effectively recommend discipline for employees under him. In the college setting, faculty discipline by a chairman may seem completely inapplicable. However, it is submitted that there are numerous questions which can be explored. Discipline can be exercised through:

1) verbal reprimands

2) written warnings

3) withholding favorable committee assignments

4) withholding travel money or other benefits

5) removal of a faculty member from classroom or other contacts with students

6) suspending with or without pay, or recommending such action

7) recommending dismissal of non-tenured faculty during his contract years

8) recommending dismissal of a tenured faculty member

While at first blush, it may seem difficult to think of examples

for which discipline could be meted out, some items immediately suggest themselves.

1) Failure to meet classes

2) Consistently late for classes

3) Verbal abuse of students

4) Failure to turn in requested data for the department chairman

5) Drunkenness or other addiction

6) Failure to meet committee assignments

7) Violating institution's rules on outside consulting

8) Discussing irrelevant material in class

9) Personal improprieties with students

10) Violating other rules or regulations of the institution such as parking, speeding, smoking in restricted areas, etc.

The ability to grant time off can be a key supervisory duty. Some questions here begin with how much time off can the chairman grant without decanal approval? How final is his recommendation for leaves of absence? If a faculty member is ill and unable to meet his duties, does he have to contact the chairman? If so, will the chairman reschedule or reassign the class?

With regard to sabbaticals, to what extent does the chairman screen and recommend successful candidates? In making such recommendations, what factors will the chairman take into account?:

1) Worthiness of each candidate's project

2) Departmental staffing needs

3) Comparison to other departmental sabbatical applications

Work assignments exist even in the relatively independent world of a faculty member, and department chairmen will usually play a role here. For example, chairmen may assign courses, particularly the "non-specialized" courses such as introductory level courses. A faculty member hired to teach a course in Byron and Shelley may not have to be "assigned" to this course, but the chairman may decide whether or not Byron or Shelley needs to be offered each term. In addition the chairman may decide who teaches how many sections of required and elective English courses in order to offer the program that will best meet the needs of students majoring in English and that will attract the largest number of non-major students. A loss in student enrollment may lead to a loss in faculty positions the following year.

Work assignments may also include assignment to committees,

assigning faculty as student advisors, assigning faculty to work at registration and pre-registration and joint assignments by chairmen for inter-departmental courses.

Other areas of exploration on the chairman issue include general departmental responsibilities (course scheduling, student affairs, presiding over department meetings, and budget preparation and administration) and supervisory responsibilities over support staff (technicians, secretaries, students, administrative assistants). On the latter point, the Board has adopted a so-called 50% rule, whereby an individual supervising only non-unit employees is only considered a supervisor if he/she spends more than 50% of the time supervising non-unit employees.

Managerial and Confidential Employees. The Board has developed through its case decisions certain exclusions for "managerial" and "confidential" employees. If these exclusion arguments are in issue, several other areas of inquiry may be necessary.

Regarding the "managerial" exclusion, most of the questions on the chairman's "status" reviewed earlier can be used on this issue, particularly the participation in management meetings with Deans and higher administrators. In addition, special attention should be given to the role of the chairmen in determining the direction in which his department may move. For example, the chairman may gear his department toward a particular academic slant or school of thought by emphasizing development of certain courses and by hiring faculty with a similar philosophical perspective. Also, a chairman who participates with other units in collective bargaining activity for the college demonstrates an important management function.

Confidential status will involve questions on the maintenance of personnel files, being privy to confidential wage and personnel data that other faculty do not have access to, and relationship to the Dean and others who are involved in framing labor relations policy, in handling grievances or in shaping responses to union demands.

Exhibits. Many types of exhibits and data can be used in presenting the College's case.

A complete list of faculty and support staff reporting to each chairman is a helpful exhibit early in the hearing.

Sample evaluation forms, with the completed recommendations of the chairman, can be introduced. Confidentiality can be preserved by by blanking out the name of the individual faculty members.

Completed sabbatical forms can be introduced showing the chairman evaluating the project and making his recommendation.

Effectiveness of a chairman's recommendations in personnel matters can be shown by specially prepared exhibits which indicate the number of positive and negative recommendations made by each chairman in reappointment, promotion and tenure decisions and then the number of such recommendations finally accepted by the administration. Correlation is essential in preparing such exhibits.

Minutes or agenda of dean's meetings with chairmen can be helpful in showing the chairman's unique status vis-a-vis faculty.

In situations where chairmen receive no identifiable salary increment, wage comparisons between chairmen and other faculty can be accomplished by taking the average chairman salary in a college and comparing it to similarly ranked faculty. For example, the average salary of chairmen holding a professor's rank in a college may be $23,000. Average professor's salaries in the same college excluding the chairman may be $20,000.

In situations where there is no fixed reduction in workload for chairmen, but reductions exist in fact, exhibits can be prepared showing the average workload of faculty in a department and the actual workload of the chairman.

Any letters of discipline signed by a chairman are helpful to show actual supervisory duties.

In the area of work assignments, any course schedules or similar documents signed by a chairman can be integrated into evidence with testimony on how the chairman assigns and schedules courses.

Offer letters to new faculty signed by a chairman are useful to show the chairman's role in hiring.

III. PART-TIME FACULTY

Whether part-time faculty should or should not be included in units of full-time faculty has been another significant issue in college unit cases. The Board, after originally including regular part-time faculty in units with full-time faculty, has now been excluding the part-timers.

At the focal point of the issue is the 1973 New York University decision (205 NLRB No. 16) where the Board first excluded part-time faculty from a unit of full-time faculty on the basis of four general factors: (1) working conditions (2) compensation (3) tenure eligibility (4) governance.

In preparing its case for inclusion or exclusion of part-time faculty, the college employer should examine these four areas closely.

3.1 Compensation

a) Are part-timers paid a percentage portion of a full-time salary or are they hired on a "per course" arrangement? If extrapolated, what would a part-timer's "full year" salary be vis-a-vis a full timer?

b) Are part-timers hired by the year, by the semester or by the course? Are there multiple year contracts for part-timers? How is this different or similar to full-timers?

c) Do part-timers receive their primary income from the college or do they tend to be "moonlighters" from other industries?

d) Do they enjoy the same fringe benefits as full-time faculty?

3.2 Governance

a) Are part-time faculty eligible for election to the faculty senate or other comparable bodies? If so, can they vote?

b) Are they eligible for and do they participate on standing college or departmental committees?

c) Do they otherwise participate in departmental decisions with regard to personnel decisions, curriculum matters and student affairs?

3.3 Tenure and Appointment Considerations

a) Are part-timers eligible for tenure?

b) Is there a presumption of renewal of contract for them?

c) Does a part-timer accumulate seniority for tenure (if he later becomes a full-timer)?

d) What is the turnover rate for part-time as opposed to full-time faculty?

3.4 Working Conditions

a) How do a part-timer's responsibilities differ from full-timers, if at all? Does the part-timer only engage in teaching or is he expected to perform research and service as full-time faculty members are?

b) Does he have to keep office hours?

c) Is he evaluated in the same way and upon the same criteria as full-timers?

d) Can he grieve dismissals or other actions through normal academic channels and grievance procedures?

e) Is he assigned counselling services for students, either formally or informally?

f) Do part-timers tend to be located in particular departments of the College? Do they tend to teach only general or overloaded courses or are they spread out throughout the curriculum?

g) Does the part-time faculty member have an obligation to publish?

h) Do part-timers generally teach during normal school hours or generally at night or weekends?

i) Do they moderate any clubs or organizations?

j) Are they hired through the same procedures and with the same forms as full timers?

k) Are they eligible for promotions in rank and general faculty salary increases?

IV. GRADUATE AND PROFESSIONAL SCHOOLS

For universities with professional schools such as law, medicine or dentistry, a potential issue for unit determination will be whether such schools are appropriately included or excluded form an overall university unit. Often, this problem will arise because a petitioning union may believe that it has little if any support in these schools and, consequently, wants them excluded from the petition. At that point, the university administration will have to decide whether it wants such schools segregated or whether it should argue that a university-wide unit including the professional schools is the only appropriate unit.

Various factors should be explored in light of several NLRB cases in this area.

4.1 Personnel policies. Does the professional school in question set its own personnel policy (e.g.. compensation, tenure, standards, hiring criteria, leaves, promotion procedures, etc.) or are such areas governed by general University policy?

4.2 Governance. Do the faculty members in the professional school serve on any university committees or on the university senate? (An exhibit showing senate and committee representation can be helpful here.) Do faculty from other schools serve on any governance bodies within the professional school? Does the school in question have its own independent governance body, such as its own senate?

4.3 Geographic proximity. Is the professional school on the main campus of the university? Does it share a building or other facilities with other schools?

4.4 Interchange. Do faculty in the professional school teach in any other schools of the university and vice versa? (A detailed breakdown of the numbers involved would make a useful exhibit.) How much daily contact is there between the professional school's faculty members and other faculty in the university?

4.5 Influences of the profession. Is the professional school in question subject to special accreditation standards by any professional associations? Are other schools in the university? What are the consequences of a denial of accreditation by the reviewing body?
Are minimum standards imposed on the school by extra-university sources, e.g. minimum days of school, minimum credit hours, required courses, student/faculty ratios? (Many law schools, for example, are subject to exacting standards by either the state courts or the bar associations in terms of which courses must be taught or how many days of class students must take.)
Are the professors more aligned with academic or the profession, e.g. do law professors maintain private practices? do medical professors attend AMA conventions? How does this differ from the faculty elsewhere in the university, if at all?
What types of consulting arrangements are made for the "professional" faculty as opposed to others in the university? Are there any "group practice" plans set up, for example?

4.6 Autonomy. What autonomy does the professional school have vis-a-vis the university?

a) separate budget?

b) separate graduation exercises?

c) independent control over hiring and firing of faculty and staff?

d) different academic calendar?

e) separate lines of supervision?

f) separate admissions and placement offices?

4.7 Funding. Is the professional school significantly funded from outside sources such as federal or state grants? How much of its operating budget is from the general university budget? (An exhibit showing source of funds for each school in the university should be used.)

4.8 Is there a smaller student/faculty ratio for the professional school when compared to the others or is it comparable?

4.9 Is there a greater percentage of full professors in the school? A significantly greater or smaller percentage of tenured professors?

4.10 Are the professional school faculty members on different contracts from the rest of the university faculty, such as 12 month contract as opposed to academic year contracts?

4.11 How do the salaries for the professional school faculty

compare with the rest of the university faculty? (This area should be covered by an exhibit showing average salaries through the university compared to the professional school faculty. High and low salaries can be included to indicate comparable or differing ranges. Care should be taken to convert 12-month salaries to 9-month salaries where necessary to reflect accurate comparisons.)

4.12 Other cosiderations. If the faculties of the special schools are in the general union, will bargaining be easier or more complicated? Will "professional" faculties actually "bargain" if they receive separate units?* [Experience indicates that many do not; they merely do not want to be governed by a campus-wide union, and thus opt for a separate unit.] Will professional school faculty members vote for "no-union" in an election which includes them in a campus-wide union?

V. OTHER PROFESSIONALS

Whether other professionals such as librarians (the librarian issue may be settled in light of the NYU case), coaches or counselors should be in or out of a faculty unit will rest on two key factors: 1) professional status 2) community of interest with faculty.

5.1 Professional Status

a) What type of work does the position entail? Is it "predominantly intellectual in nature"? Does it require the "constant exercise of discretion"?

b) Is an advanced degree or training required for the position?

c) What are the backgrounds of the individuals currently serving in the position?

d) What salary and fringe benefits are given? Are they exempt or nonexempt? Salaried or paid by the hour?

e) Do they have their own offices?

f) Do they set their own hours or are they fixed?

g) Are they in a contractual relationship with the university?

*As a general matter traditional graduate school faculties are included within the greater faculty unit. Arguments for exclusion should be limited to those arguments which would exclude any faculty member: community of interest, geographic dislocation, etc. For example of this kind of exclusion see University of Miami-Coral Gables, 213 NLRB No. 152 (1974) wherein faculty at the Graduate School of Marine and Atmospheric Science were excluded as a result of geographic dislocation and a lack of inter disciplinary activity.

5.2 Community of Interest

a) Do the professionals receive the same fringe benefits as faculty? Are their salaries comparable?

b) Are they eligible for tenure?

c) Are they eligible for sabbaticals?

d) Can they participate on faculty governance bodies? Do they have instead their own governance bodies?

e) Do they hold faculty rank?

f) Do the professionals participate and vote in academic department meetings? Can they serve on departmental personnel committees?

g) Do they hold the same type of contract as faculty? Is the renewal sequence comparable? Are the notice requirements the same for nonrenewals?

h) Do the professionals engage in any teaching functions? Do they counsel students?

i) How much contact do they have with faculty?

j) How much contact do they have with students?

k) Are professionals evaluated through normal academic channels? Are the same criteria used? Are the same evaluation forms used?

l) Can professionals grieve through normal academic appeal procedures?

m) Are the professionals' work location geographically close to the faculty's?

n) On what basis are professionals promoted? Does promotion for a professional usually involve a change in job duties as distinct from faculty promotions?

o) How is the hiring procedure the same or different for professionals than faculty?

p) What are the administrative lines of supervision for professionals?

VI. ORGANIZATION AND STRATEGY

Behind the preparation of any of these issues is the matter of organization. An administration faced with a petition for representation should carefully lay out how it will proceed in the ensuing days

in terms of assignments and coordination of preparation.

Initial meetings should be held between the top administrators and labor relations counsel to discuss the politics and pragmatics of taking certain unit positions. All employee categories should be discussed for potential litigation. Unions may amend their petitions at any time during the proceedings, and an administration should not be caught unaware and without a position on an issue.

Once the college's unit position is ascertained, preparation should begin immediately. Selection of witnesses should be reviewed and decided upon first. Typically, the deans, provost or a vice president for academic affairs can cover issues such as department chairmen and part-time faculty. The union may, however, use a chairman as a star witness. In such a case the administration may wish to counter with another chairman who will provide the desired evidence from his daily experience. A personnel officer may be the best person to review other professionals and any questions of fringe benefits. In any event, the witness should be someone thoroughly familiar with the various questions that may be asked on these issues.

Obviously, labor relations counsel should prepare the witnesses for the hearing and develop testimony for the witness' review prior to the hearing.

Documentary exhibits should likewise be discussed, and one person or one office assigned to develop such exhibits for review by counsel.

Although representation cases are not formal court proceedings, certain rules of evidence still prevail and, consequently, consideration should be given as to who the best witness would be to introduce specially prepared exhibits.

In this area, the witness should be able to explain how the exhibit was prepared, what it means, what the source data was, how accurate it is, etc.

A great deal of precious time can be squandered through poor organization, overlapping assignments and faulty communications. Consequently, it is emphasized that a "plan of action" be carefully developed with counsel as soon as possible. If, for example, a petition is imminent, work can begin ahead of time in anticipation of a formal filing.

VII. INFORMING THE FACULTY

During this same period of preparation for the representation case, many questions are bound to arise from faculty members. In the early unit determination cases, administrations, either by reason of a misconception of constraints which the law placed upon them or because of a misplaced desire not to interfere in intrinsic faculty matters, took an unrealistic position in which they raised no issues for faculty consideration and answered no questions concerning representation matters.

Administration awareness of the importance of a fully informed faculty electorate has now been heightened by numerous faculty elections since Cornell* (a non-faculty case). There appears to be general agreement that a proper role for administration is to inform and advise faculty on representation issues during the course of union organizing efforts. It is submitted that this is both a legally proper role and an administratively appropriate role for university administrators. In addition, it habituates faculty to reading the administrative memos or weekly newsletter for accurate and complete information.

A checklist of issues which might be raised and answered in this context follows:

7.1 Impact on Governance Rights.

7.1.1 May the administration continue to interact with the faculty senate and various faculty committees in a pre-election situation?

7.1.2 Will this depend upon whether the senate or committee deals with matters of "wages, hours and conditions of employment"?

7.1.3 As a practical matter should an administration take a highly legal and technical position on this question?

7.1.4 Does the propriety of interaction and cooperation between the administration and the senate and committees depend upon whether a union is certified and the faculty's "exclusive" bargaining representative? (The potential for unfair labor practice is high when dealing in this area.)

7.1.5 Must the administration limit itself to dealing with matters that are clearly outside the purview of "wages, hours and conditions of employment" with faculty bodies other than the union?

7.1.6 Does the faculty senate then become a totally ineffectual organ for governance on the campus?

7.1.7 Does the faculty, qua faculty, individually or collectively, realize that it may no longer deal with "supervision", which always includes deans and may well include department chairmen, with respect to matters of "wages, hours and conditions of employment" if a union is certified?

7.2 What are the bargainable issues if a union is certified?

*Cornell University, 183 NLRB 41 (1970).

7.2.1 Does the phrase "wages, hours and conditions of employment" comprehend matters such as:

7.2.1.1 Tenure;
(If so, may it be bargained away or modified?)

7.2.1.2 Selection of courses;

7.2.1.3 Workload and workhours;

7.2.1.4 Class size;

7.2.1.5 Existence of governance forms which do not deal with bargainable subject matters;

7.2.1.6 Selection of administrative hierarchy, including deans and department chairmen;

7.2.1.7 Issues of academic freedom; and

7.2.1.8 Financial records and budget preparation?

7.2.2 What recourse does the faculty have should the administration refuse to bargain over subjects which are "non-mandatory"?

7.3 As a result of certification and course of bargaining, may faculty be required to join a union and pay dues?

7.3.1 Does the faculty comprehend the distinction between a "union shop" and an "agency shop"?

7.3.2 Does the faculty understand that they may be discharged by refusing to pay dues, or an amount equivalent thereto, under one of these two forms of union security clauses?

7.4 May the faculty strike?

7.4.1 Does this depend upon extant state law?

7.4.2 If a strike is called, may all faculty participate in the strike vote or merely those who are members of the union?

7.4.3 If a strike vote is taken, what constitutes a "quorum" under the union's constitution and by-laws?

7.4.4 If there is a strike, do faculty understand that the administration has no obligation to pay wages and fringe benefits?

7.4.5 If there is a strike, may faculty collect unemployment benefits or welfare benefits under existing

state or federal law?

7.4.6 Do faculty understand that the union has a legal right to impose fines upon its membership if any of its members refuse to participate in such a strike or cross a union picket line?

7.5 Does the faculty understand the nature of the "impasse" concept of collective bargaining?

7.5.1 Do they realize that if a declared impasse is reached upon any single issue the administration is free to put into effect its own offer or demand pertaining to that issue?

7.5.2 Does the faculty realize that the administration is free to put forth its own demands relating to mandatory bargaining subjects and negotiate to an impasse on them?

7.6 Has the administration made the faculty aware of the nature of the bargaining process and the type of contingent that has historically represented faculty when a collective bargaining representative is chosen?

7.7 Has the administration recently apprised faculty of their salaries and fringe benefits and related them to comparable colleges or universities? When is this most likely to have a favorable effect?

7.8 Is the faculty aware of the service costs of union representation?

7.9 Is the faculty aware of the national union's position on issues such as merit, evaluation and confidentiality?

7.10 Does the faculty understand the prospects for decertifying a union, should it no longer choose to be represented?

7.11 Is the faculty familiar with other collective bargaining agreements which the organizing union has actually negotiated?

7.12 Does the faculty know how long it typically takes to negotiate such contracts?

7.13 Has the faculty been apprised of which institutions' faculty have supported collective bargaining and which have not?

In answering some of these questions, there is abundant source and reference material. Others require new and novel argument. However, the proper and legal utilization of these materials can involve difficult questions of law and timing. Certainly, however, it would appear that any administration which does not raise these issues and provide its faculty with the resource material, or at the least, the means of

finding such material, is doing a grave injustice to those who will be called upon to decide an issue of such far-reaching impact as whether the faculty will have union representation.